

EXECUTED IN 6 COUNTERPARTS

OF WHICH THIS IS NO. 5

AGREEMENT

RECORDATION NO. 6440

DEC 27 1971 - 2 15 PM

INTERSTATE COMMERCE COMMISSION

Dated as of January 1, 1972

Between

U. S. RAILWAY MFG. CO.

and

THE CHESAPEAKE AND OHIO RAILWAY COMPANY

- - - - -
Covering

110 100-Ton Coil Steel Flat Cars

and that payment in full for all cars delivered will be made from the proceeds of such financing or otherwise, on or before June 1, 1972, or earlier as required by the aforesaid letter agreement.

THIS AGREEMENT, dated as of January 1, 1972, by and between U. S. RAILWAY MFG. CO., an Illinois corporation (Manufacturer), and THE CHESAPEAKE AND OHIO RAILWAY COMPANY, a Virginia corporation (C&O);

W I T N E S S E T H :

The Manufacturer and C&O heretofore entered into a letter Agreement dated September 27, 1971 (a copy of which letter Agreement is made a part hereof by reference), and such addenda thereto and modifications thereof as may have been or may be agreed upon in writing between the Manufacturer and C&O, whereunder the Manufacturer agreed to construct at its Blue Island, Illinois plant and to deliver to C&O at C&O's Rockwell Street Yard, Chicago, Illinois, or at such other point or points as directed by C&O, and C&O agreed to accept and pay for the following railroad equipment (Cars):

110 100-ton coil steel flat cars, to bear C&O
road numbers 306500 - 306609, inclusive.

As contemplated by said letter Agreement, C&O intends to finance the purchase of the Cars from the Manufacturer pursuant to a Conditional Sale Agreement to be dated as of January 1, 1972, but deliveries of the Cars are scheduled to begin on or about January 1, 1972, and C&O will not have established said financing arrangement by that time nor be in position and warrants to take such deliveries thereunder. C&O represents that such financing arrangement will be established, however, on or before March 1, 1972, C&O, in order that it may use the Cars pending completion of such financing arrangement, has arranged with the Manufacturer to give it temporary custody and possession of the Cars upon their completion, solely as a bailee of the Cars, and the Manufacturer is willing to do so upon the terms and conditions hereinafter stated.

and C&O agrees to furnish to Manufacturer any additional Certificates of Acceptance for delivered Cars as may be required under any financing arrangement referred to above.

In consideration of the premises, the Manufacturer hereby delivers to C&O and C&O hereby accepts from the Manufacturer the Cars as of the date each of them is delivered to C&O at the delivery point, for the period terminating on the earlier of March 1, 1972, or the date of establishment of said financing arrangement. On such termination date, this Agreement shall automatically be cancelled and superseded without further action by or notice to any party concerned.

Upon delivery of each Car to the delivery point, C&O's representative will execute a certificate of acceptance acknowledging the receipt of delivery of such Car under this Agreement, Title to the Cars shall remain in the Manufacturer and C&O's right and interest therein is and shall be solely that of possession, custody, and use as bailee under this Agreement. Transfer of title shall be effected only at the time of delivery of bills of sale. C&O, without expense to the Manufacturer, will promptly cause this Agreement to be filed with the Interstate Commerce Commission for recordation under Section 20c of the Interstate Commerce Act. In addition, C&O shall do such other acts as may be required by law, or reasonably requested by the Manufacturer, for the protection of the Manufacturer's title to and interest in the Cars.

C&O agrees that it will permit no liens of any kind to attach to the Cars; and that it will

(a) indemnify and save harmless the Manufacturer from any and all claims, expenses, or liabilities of whatsoever kind and

(b) pay any and all taxes, fines, charges, and penalties that may accrue or be assessed or imposed upon the Cars or the Manufacturer because of its ownership or because of the use, operation, management, or handling

in connection with the use, operation, management or handling of the Cars;

and C&O will, in any event pay to the Manufacturer in cash the purchase price for any delivered Cars not included in and paid for through a financing arrangement.

of the Cars by C&O during the term of this Agreement. C&O's obligations contained in this paragraph shall survive the termination of this Agreement.

C&O will, at its own expense, keep and maintain the Cars in good order and running condition and will at its option repair or replace or promptly pay to the Manufacturer the purchase price in cash of those Cars which may be damaged or destroyed by any cause during the term of this Agreement

Prior to the delivery of each Car to C&O under this Agreement it will be numbered with a road number as hereinbefore indicated, and there shall be plainly, distinctly, permanently, and conspicuously marked upon each side of each Car, in contemplation of said financing arrangement,

"THE EQUITABLE TRUST COMPANY, AGENT, OWNER"

C&O hereby agrees to indemnify the Manufacturer against any liability, loss, or expense incurred by it as a result of the placing of the aforementioned markings on the Cars.

In case, during the continuance of this Agreement, such markings shall at any time be removed, defaced, or destroyed on any Car, C&O shall immediately cause the same to be restored or replaced.

All or any of the rights, benefits, or advantages of the Manufacturer, including the right to receive the purchase price of the Cars as provided in the letter Agreement, may be assigned by the Manufacturer and reassigned by any assignee at any time or from time to time, provided, however, that no such assignment shall subject any such assignee to any of the Manufacturer's guarantees, warranties, indemnities or any other obligations contained in this Agreement or in the letter Agreement relating to the Cars. In the event the Manufacturer assigns its rights to receive

the payments herein and/or under the letter Agreement, and C&O receives written notice thereof from the Manufacturer, together with a counterpart of such assignment stating the identity and the post office address of the assignee, all payments thereafter to be made by C&O under this Agreement shall, to the extent so assigned, be made to the assignee against proper receipt therefor in form satisfactory to C&O.

In the event of any assignment by the Manufacturer of its rights to receive any payments under this Agreement or under the letter Agreement, the rights of such assignee to such payments as may be assigned together with any other rights hereunder which can be and are so assigned, shall not be subject to any defense, set-off, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to C&O by the Manufacturer. Any and all such obligations, howsoever arising, shall be and remain enforceable by C&O, its successors and assigns, only against the Manufacturer and its successors and assigns (other than assignees as such of rights, benefits, or advantages assigned pursuant to this Agreement).

* * * * *

C&O agrees with the Manufacturer that the execution by the Manufacturer of this Agreement or the delivery by the Manufactuer to C&O of the Cars, as contemplated by this Agreement, shall not relieve C&O of its obligations to accept, take and pay for the Cars in accordance with the terms of the letter Agreement or impair any of the Manufacturer's rights under the letter Agreement.

Attest:

U. S. RAILWAY MFG. CO.

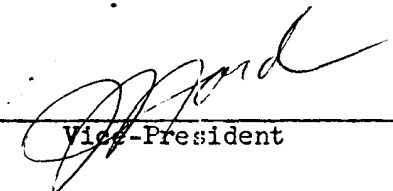

Assistant Secretary

By 
Vice President - Sales

Attest:

THE CHESAPEAKE AND OHIO RAILWAY COMPANY


Secretary

By 
Vice-President

APPROVED AS TO FORM

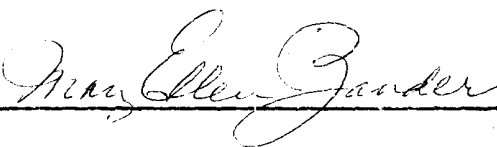


GENERAL ATTORNEY

12/17/71

STATE OF ILLINOIS)
) SS:
COUNTY OF COOK)

On this *22nd* day of December, 1971, before me personally appeared RALPH E. BELL, to me personally known, who, being by me duly sworn, says that he is Vice President - Sales of U. S. RAILWAY MFG. CO., that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.



My Commission Expires June 11, 1975

STATE OF OHIO)
) SS:
COUNTY OF CUYAHOGA)

On this *8th* day of December, 1971, before me personally appeared J. T. FORD, to me personally known, who, being by me duly sworn, says that he is a Vice-President of THE CHESAPEAKE AND OHIO RAILWAY COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.



RALPH D. GRIEBLING, Attorney
NOTARY PUBLIC - STATE OF OHIO

My Commission has no expiration date.
Section 147.03 R.C.